

From: Chuck Cowan <chuckcowan@tyler.net>
To: Brian White <Brian.White@oiec.state.tx.us>
Date: 4/1/2011 2:57 PM
Subject: FEEDBACK on OIEC Ethics Rules: Agency

Dear Brian:

Thank you for your email concerning the new proposed ethics. I applaud these general efforts.

I would like to voice concern and a level of angst at the "advocate" language which is included in 276.13 (b). If I am reading the proposed language correctly it is attempting to avoid any limitation on an Ombudsmen's ability to "advocate" on behalf of an injured worker.

The relevant creating and enabling statutes in the Texas Labor Code never use the word "advocate". Advocate is both a verb and a noun and is a word or term that has, in the statutory, regulatory and common law realm) traditionally been associated with the legal and authorized "practice of law" in this great state.

As you know, OIEC Ombudsmen are not attorneys at law or in fact and are not authorized to practice law in this state or elsewhere.

Despite long standing concerns, which are routinely perpetuated by the comments and observations of injured workers who become clients of my practice, surrounding these very sensitive areas of law I have chosen to remain silent on this issue.

Recent proposed legislation and regulation is seemingly pushing this issue further and further into the forefront. I am now concerned that my ethical obligations as a licensed Texas attorney may have come into play and that a duty to report the issue to the State Bar Office of Chief Disciplinary Counsel may now exist.

Before taking that possibly unnecessary step, I would value the opportunity to discuss this matter further.

At your convenience, please let me hear from you.

Sincerely,

C. D. "Chuck" Cowan, Attorney
Law Offices of C. D. Cowan, P.C.
414 South Bonner Ave.
Tyler, Texas 75702-8033

On Apr 1, 2011, at 10:11 AM, "Brian White" <Brian.White@oiec.state.tx.us> wrote:

> Hello Texas Legislature and Workers' Compensation Stakeholders:
>
> The Office of Injured Employee Counsel is seeking feedback on the agency's proposed new ethics rules. Your feedback on these rules is greatly appreciated. Please see the attached memorandum.
>
> Thank you,
> BW

>
>
> Brian M. White
> Deputy Public Counsel/Chief of Staff
> Office of Injured Employee Counsel
> Telephone: (512) 804-4186
> Fax: (512) 804-4181
>
> <Memo to wc stakeholders ethics 4-1-11.doc>

From: "John D. Pringle" <johndpringle@sbcglobal.net>
To: <Brian.White@oiec.state.tx.us>
CC: "steve nichols" <snichols@insurancecouncil.org>
Date: 4/5/2011 12:47 PM
Subject: Proposed Rules
Attachments: Proposed OIEC rules 4-4-11.doc

Dear Brian:

I thought I had your e-mail address but I could not find it so I asked Steve Nichols if he could send it to me.

Steve sent me your e-mail address so I could send you my proposed changes to the proposed OIEC rules.

Attached in Word are my proposed changes. I hope the changes are clear and understandable. If not, let me know and I will try to clarify the changes.

I have tried to give a brief explanation for the proposed changes.

I am copying Steve on this e-mail so he has my proposed changes in the event ICT is going to make any comments or proposed changes.

I trust you are well.

John D. Pringle
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In proposed rule 276.7(b) strikethrough the word "should" and substitute the word "shall."

276.7. Agency's Ethics Statement and Employee Requirements.

(b) An OIEC employee ~~should~~ not:

Proposed rule 276.7(b) would then read:

"(b) An OIEC employee shall not:"

This proposed change would make compliance with the agency's policies mandatory.

In proposed rule 276.7 create a new subsection (c) requiring the reporting of an employee who violates the agency's ethics policies.

Proposed rule 276.7(c) would then read:

"(c) An employee shall report his or her own failure or any other employee's failure to comply with the agency's ethics policies. The employee shall report the failure in writing to his or her immediate supervisor."

The proposed change would put teeth into the enforcement of the agency's policies.

In proposed rule 276.8(b) strikethrough the word "come" and substitute the words "are stated or testified to."

276.8. Ethics Committee.

(b) The mission statement for OIEC's Ethics Committee is to practice and promote the highest standards of ethical behavior within OIEC. In order to set the highest standards of conduct, including the appearance of propriety in the operation of our goals to assist, educate and advocate on behalf of injured employees in Texas, the members of the Ethics Committee are committed to: assuring honesty and confidentiality in all matters that ~~come~~ before the committee, faithfully adhering to the agency's code of ethics, educating the agency on ethics and standards of conduct, and making recommendations and providing solutions.

Proposed rule 276.8 (b) would then read:

"(b) The mission statement for OIEC's Ethics Committee is to practice and promote the highest standards of ethical behavior within OIEC. In order to set the highest standards of conduct, including the appearance of propriety in the operation of our goals to assist, educate and advocate on behalf of injured employees in Texas, the members of the Ethics Committee are committed to: assuring honesty and confidentiality in all matters that are stated or testified to before the committee, faithfully adhering to the agency's code of ethics, educating the agency on ethics and standards of conduct, and making recommendations and providing solutions."

Reading the current proposed rule 276.8(b) makes me believe that a violation of the agency's ethics policy, if brought before the Ethics Committee, could never be disclosed to any one once it was brought to the Ethics Committee. The proposed change would only make statements made to the Ethics Committee confidential. Not the violation itself.

In proposed rule 276.13(b) add new language to clarify that it is the Ombudsman is who is prevented from making the groundless factual or legal assertions and not make the Ombudsman responsible for the groundless factual or legal assertions that might be made by an injured worker or other person without the foreknowledge of the Ombudsman.

Current proposed rule 276.13(b) now reads:

276.13. Ombudsman Program Ethics Code of Conduct.

(b) Office of Injured Employee Counsel Ombudsmen shall adhere to the ethical standards as reflected in Rule 13 of the Texas Rules of Civil Procedure in that groundless factual or legal assertions will not be made. This shall not be construed as a limitation on the ability of Ombudsmen to assist, educate, or advocate on behalf of injured employee in the pursuit of valid claims or issues.

Add language following the end of the first sentence and add a new sentence.

The new language would be "by the Ombudsman. Groundless factual or legal assertions that might be made by an injured worker or other person without the foreknowledge of the Ombudsman are not included in this prohibition."

Proposed rule 276.13(b) would then read:

"(b) Office of Injured Employee Counsel Ombudsmen shall adhere to the ethical standards as reflected in Rule 13 of the Texas Rules of Civil Procedure in that groundless factual or legal assertions will not be made by the Ombudsman. Groundless factual or legal assertions that might be made by an injured worker or other person without the foreknowledge of the Ombudsman are not included in this prohibition. This shall not be construed as a limitation on the ability of Ombudsmen to assist, educate, or advocate on behalf of injured employee in the pursuit of valid claims or issues."

Kristi Dowding - RE: OIEC Ethics Rules: Agency Seeks Feedback

From: "Joe Anderson" <JAnderson@bajb.com>
To: "Brian White" <Brian.White@oiec.state.tx.us>
Date: 4/8/2011 2:34 PM
Subject: RE: OIEC Ethics Rules: Agency Seeks Feedback
Attachments: TITLE 28.docx

Brian,
Attached are our comments in "track changes." Most are minor.
Thanks,
Joe

From: Brian White [mailto:Brian.White@oiec.state.tx.us]
Sent: Friday, April 01, 2011 10:11 AM
To: Brian White
Subject: OIEC Ethics Rules: Agency Seeks Feedback

Hello Texas Legislature and Workers' Compensation Stakeholders:

The Office of Injured Employee Counsel is seeking feedback on the agency's proposed new ethics rules. Your feedback on these rules is greatly appreciated. Please see the attached memorandum.

Thank you,
BW

Brian M. White
Deputy Public Counsel/Chief of Staff
Office of Injured Employee Counsel
Telephone: (512) 804-4186
Fax: (512) 804-4181

TITLE 28. INSURANCE

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC § 276.7, §276.8

The Office of Injured Employee Counsel (OIEC) proposes new § 276.7 and § 276.8, concerning OIEC's standards regarding ethics. Ethics can be defined as moral values, which affect personal and professional actions. Ethical standards are fundamental to the successful operation of an agency to ensure public funds are used efficiently.

There are many areas in which ethical issues may emerge. Common areas are gifts from outside sources, confidentiality, use of state property, outside employment, drug-free workplace, firearms and weapons, political activities, conflict of interest, post-employment, publicity, and fraudulent activity. A detailed guide regarding ethics can be obtained from the Texas Ethics Commission (A Guide to Ethics Laws for State Officers and Employees, Revised April 24, 2008). The Texas Ethics Commission and the Office of the Attorney General are available resources if it is determined clarification is needed on a particular issue.

Texas Labor Code §404.110(b) provides that an employee of the OIEC may not be compelled to disclose information communicated to the employee by an injured employee on any matter relating to the injured employee's claim.

New §276.7 provides for OIEC's ethics statement. New §276.8 provides for the function of OIEC's Ethics Committee and OIEC's Ethics Committee mission statement.

Mr. Brian White, Deputy Counsel/Chief of Staff, has determined that for each year of the first five years the proposed section shall be in effect, there shall be no fiscal impact to state and local governments as a result of the enforcement or administration of this rule. There shall be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. White has determined that for each year of the first five years the proposed new sections are in effect the public and workers' compensation stakeholders will be notified of agency requirements for staff, which include the highest ethical standards of conduct. OIEC's rules will now reflect requirements set in Texas Government Code §572.051 and the agency's handling of ethics issues through the Ethics Committee. New §276.7 and §276.8 ensure ethical issues are addressed promptly and accurately which will safeguard the agency and allow it to more effectively fulfill its mission to assist, educate and advocate on behalf of the injured employees of Texas.

OIEC has determined that the proposal will not have an adverse economic effect on small or micro-business.

OIEC has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225 and therefore a regulatory flexibility analysis is not required.

OIEC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the

absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Texas Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 10, 2011, to Brian White, Deputy Public Counsel/Chief of Staff, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Deputy Public Counsel/Chief of Staff.

The new sections are proposed pursuant to Texas Labor Code §§404.106, 404.1015, 404.110 and 404.111. Section 404.106 provides the public counsel rulemaking authority to adopt rules. Section 404.1015 provides for refusal to provide or terminate services. Section 404.110 provides for applicability to Public Counsel of confidentiality requirements. Section 404.111 provides access to information. Texas Government Code §572.051 provides the standards of conduct and state agency ethics policy.

The following sections are affected by this proposal:

Rules: §276.7 and §276.8

Statute: Texas Labor Code §§404.106, 404.1015, 404.110, 404.111; Texas Government Code §572.051.

§276.7.Agency's Ethics Statement and Employee Requirements.

(a) Each OIEC employee has an obligation to maintain high ethical standards in the performance of their work responsibilities and in their personal life, realizing that lapse in such judgment will reflect negatively on OIEC. OIEC employees must seek to enhance and implement ethical values based on established principals of sound reasoning and the highest standards of business conduct.

(b) An OIEC employee should not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the employee; or the employee knows, or should reasonably know, is being offered with the intent to influence employee's official action or conduct;

(2) accept other employment or engage in a business or professional activity that the employee might reasonably expect would require or induce-cause the employee to disclose confidential information acquired by reason of the position;

(3) accept other employment or compensation that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the employee's official powers or employee's official duties in favor of another a particular manner.

§276.8.Ethics Committee.

(a) OIEC's Ethics Committee shall be made up of OIEC staff who serve two-year staggered terms. The Ethics Committee is made up of the agency's ethics officer, who is an attorney and

shall serve as the chair of the committee, and a cross-section group of employees from various agency programs other programs within OIEC. The ethics officer also provides training, specific consultation to the Public Counsel and Deputy Public Counsel, and serves as the legal counsel for all matters regarding ethics. The Ethics Committee meets to address ethical issues that are submitted to the committee and to recommend resolution.

(b) The mission statement for OIEC's Ethics Committee is to practice and promote the highest standards of ethical behavior within OIEC. In order to set the highest standards of conduct, including the appearance of propriety in the operation of our goals to assist, educate and advocate on behalf of injured employees in Texas, the members of the Ethics Committee are committed to: assuring honesty and confidentiality in all matters that come before the committee, faithfully adhering to the agency's code of ethics, educating the agency personnel on ethics and standards of conduct, and making recommendations and providing solutions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2011.

TRD-201100567

Brian White
Deputy Public Counsel/Chief of Staff
Office of Injured Employee Council
Earliest possible date of adoption: March 27, 2011

For further information, please call: (512) 804-4182

J:\Comp General\TITLE 28.docx

Kristi Dowding - RE: [Workerscompensationsection] OIEC Seeks Feedback on Ethics Rules

From: "Kay Goggin" <kay@gogginlaw.com>
To: <workerscompensationsection@mailman.io.com>, <leo.lopez@hosue.state.tx.u...>
Date: 5/12/2011 4:33 PM
Subject: RE: [Workerscompensationsection] OIEC Seeks Feedback on Ethics Rules
CC: "Kristi Dowding" <Kristi.Dowding@oiec.state.tx.us>

Brian, the hyperlink did not work: while it took me to the Secretary of State page it says: **Sorry, but the requested file was not found**

But I will tell you I am concerned about the "must have a legitimate workers' compensation claim" language. If you mean it is a comp claim as opposed to a non-subscriber, then of course.

But I fear something much more worrisome. That you will pre-judge evidence and pick and choose your clients. Who is making that determination? I've had DWC, and OIEC, tell claimants they did not have a claim or other nonsense (can't get a hearing because some clerk decided she didn't like the evidence). Well, that is not your right nor responsibility to make that determination. Many of those discouraged claimants have ultimately prevailed. And just because a claimant does not prevail, it does not mean the claim was not legitimate. OEIC was designed to help unrepresented claimants, and I think you should. OEIC should be representing claimants on the hard to handle claimants and claims. This is one reason OEIC was created. The private attorneys must screen clients for professional and economic reasons

I have been deeply disappointed in the current legislature for taking away our civil rights. "We The People" are being replaced by something that looks like the countries our brave military are fighting. This pre-judged "legitimate claim" is just one more example of disenfranchisement.

Once I can actually see your proposed rules, I can give specific comments.

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